

No. 9/4/87-Lab./7212.—In pursuance of the provision of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and management of M/s. Sant Auto Industries, 246/24, Faridabad.

BEFORE SHRI S. B. AHUJA,  
PRESIDING OFFICER,  
INDUSTRIAL TRIBUNAL, HARYANA,  
FARIDABAD

Reference No. 178/1986

between

SHRI JANARDAN PRASAD, S/O SHRI AMRIT PRASAD, HOUSE NO. 341, P.O. GOSHI, TEHSIL BALLABGARH, DISTRICT FARIDABAD AND THE MANAGEMENT OF M/S. SANT AUTO INDUSTRIES, 246/24, FARIDABAD

Present:

Shri Jawahar Lal, Authorised Representative for the workman.

None for the management.

#### AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following Industrial Disputes between Shri Janardan Prasad, workman and the management of M/s. Sant Auto Industries, 246/24, Faridabad to this Tribunal for adjudication:—

Whether the termination of services of Shri Janardan is justified and in order? If not, to what relief is he entitled?

2. On notices being given, the parties appeared.

3. The petitioner's case is that he was working in the respondent company for the last four years as Furnace Operator. His last drawn wages were Rs. 550 per month. He alleged that his services were abruptly terminated on 31st May, 1986 without any notice. He challenged the order of termination of his services being illegal and

inutter disregard of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). He has now prayed for reinstatement with continuity of service and with full back wages.

4. The respondent controverted the claim of the petitioner. It was pleaded that the claimant was never employed by the respondent and there did not exist any relationship of employer and employee between the parties. The unit came into existence in November, 1983 and Company has since been closed on 31st May, 1986 and proprietor had sold the unit.

5. The petitioner filed rejoinder wherein he reiterated his stand.

6. On the pleadings of the parties, the following issues were settled:—

- (1) Whether there is no relationship of employer and employee between the parties? OPM.
- (2) Whether the reference is bad in law? OPM.
- (3) Whether there does not exist any industrial dispute between the parties? OPM.
- (4) Whether the respondent Company has closed on 31st May, 1986 as alleged? OPM.
- (5) Whether the termination of service of Shri Janardan was justified and in order? If not, to what relief is he entitled? OPM.

7. Subsequently, the respondent and their authorised representative did not put in appearance and *ex parte* proceedings were ordered against the management on 2nd June, 1987.

8. The petitioner stepped in the witness-box and examined Shri Ram Lagan as WW-2 in support of his case. He also produced documents, Exhibit W-1 to W-3 in support of his case.

9. I have heard Shri Jawahar Lal, Authorised Representative for the workman and perused the records. My findings on the aforesaid issues are as under:—

ISSUES NO. 1, 4 AND 5:

All these issues are inter-connection and would be discussed together.

10. Janardan WW-1, the petitioner has supported his case on oath by deposing that he was employed by the respondent-management four years back and that his services were illegally terminated on 31st May, 1986. He testified that no notice or retrenchment compensation was paid to him. He also stated that the respondent factory was still running and has not been closed. He produced Exhibit W-1 the copy of the bill signed by him showing that he had worked in the respondent company. His version was corroborated by Ram Lagan, WW-2. There are no reasons to disbelieve the sworn testimony of Janardan and Ram Lagan, WW-2 particularly when the evidence goes unrebutted on the record.

11. It is amply established by *ex parte* evidence led by the petitioner that he had been in continuous service for more than one year under the employer and that his services were terminated without complying with mandatory provisions of Section 25-F of the Act because no notice was ever given to him and no retrenchment-compensation was paid to him. The termination of his services clearly amounts to retrenchment as defined in Section 2(oo) of the Act.

12. As pre-requisite for valid retrenchment as laid down in Section 25-F of the Act had not been complied with, the retrenchment bringing about termination of services is void *abinitio*, invalid and inoperative. The respondent Company is still running and as such the respondent company cannot avoid his liability. Consequently these issues are decided against the respondent.

#### ISSUE NO. 2 AND 3:

13. The termination of services of an individual workman is now deemed as an industrial dispute between the workman and the employer under Section 2-A of the Act. Thus the reference is proper and both these issues are answered against the respondent.

14. In the result, the reference succeeds. The petitioner is ordered to be reinstated with full back wages and with benefit of continuity of service. An *ex parte* award is passed in favour of the workman. No order as to cost.  
The 30th July, 1987.

S. B. AHUJA,  
Presiding Officer,  
Industrial Tribunal, Haryana,  
Faridabad.

Endorsement No. 936(C), dated 31st July, 1987.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under Section 15 of the Industrial Disputes Act, 1947.

The 30th July, 1987.

S. B. AHUJA,

Presiding Officer,  
Industrial Tribunal, Haryana,  
Faridabad.

No. 9/4/87-6Lab./7621.—In pursuance of the provision of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and management of M/s. Endee Woollen and Silk Mills, Pvt. Ltd., 14/4, Mathura Road, Faridabad.

BEFORE SHRI S. B. AHUJA  
PRESIDING OFFICER,  
INDUSTRIAL TRIBUNAL HARYANA,  
FARIDABAD

Reference No. 45 of 1985

between

THE MANAGEMENT OF M/S. ENDEE  
WOOLLEN AND SILK MILLS, PVT. LTD., 14/4,  
MATHURA ROAD, FARIDABAD, AND ITS  
WORKMEN

Present:

Shri J. S. Saroha, Authorised Representative  
for the management.

None for the workmen.

#### AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between the management of M/s. Endee Woollen and Silk Mills Pvt. Ltd., 14/4, Mathura Road, Faridabad and its workmen to this Tribunal for adjudication:—

- (1) Whether the workmen are entitled to two sets of uniforms in a year? If so, with what details?

(2) Whether the workers besides casual leave are entitled to 7 sick leave in a year ? If so, with what details ?

(3) Whether the workers are entitled to half Kg. milk and one-fourth Kg. Gur per day ? If so, with what details ?

2. On notices being given the parties appeared. The workmen filed statement of claim signed by Sudama Parshad and Rajinder Singh. It was pleaded therein that the one pair of uniform is not sufficient for whole year and as such they demanded two pair of uniforms. They also alleged that they are entitled to 7 sick leaves besides casual leave as were being allowed by other factories in Faridabad. They also claimed half Kg. Milk and one-fourth Kg. Gur on the ground that chemical and fumes which emit during the manufacturing process effect their lungs.

3. The case was contested by the respondent. It was *inter alia* pleaded that Rajinder Singh and Sudama Parshad have signed the claim statement in their personal capacity and they were not authorised persons who filed and verified the pleadings on behalf of the workmen. It was also pleaded that the dispute has not been espoused by substantial number of workmen of the establishment. The plea was also taken that there was no Union in the name and title of 'Endee Woollen and Silk Mills Committee, registered under the Trade Unions Act. The plea was also raised that no proper demand notice was served on the employer and rejected by them before conciliation proceedings were initiated and as such there did not exist any industrial dispute. On the merits it was pleaded that there was no justification whatsoever for any demand of the workers.

4. On the pleadings of the parties, the following issues were settled :—

(1) Whether the workers are entitled to two sets of uniforms in a year ? If so, with what details ? OPW.

(2) Whether the workers besides casual leave are entitled to 7 sick leave in a year ? If so, with what details ? OPW.

(3) Whether the workers are entitled to half Kg. Milk and one-fourth Kg. Gur per day ? If so, with what details ? OPW.

(4) Whether the dispute has been espoused by the substantial number of workmen as pleaded OPA.

(5) Whether there is no Union as Endee Woollen and Silk Mills as pleaded ? OPM.

(6) Whether the concern in question does not fall in the category of industry ? OPM.

(7) Whether as proper demand notice was served on the employer ? OPM.

(8) Whether Shri S. C. Srivastva was duly authorised to represent the workmen ? OPA.

(9) Whether Shri Rajinder Singh and Shri Sudama Parshad are competent to sign and verify the pleadings on behalf of the workmen, and if not, to what effect ?

(10) Whether the concern in question does not fall in the category of industry ?

5. The workmen examined Shri Mahinder Kumar one of the workers as WW-1 and later on neither the workmen nor their authorised representative appeared and as such *ex parte* proceedings were taken against the workmen. The management examined Shri Gur Parshad Satsangi, MW-1, Director of the Company.

6. I have heard Shri S. S. Saroha, learned authorised representative for the workmen and perused the record.

#### ISSUE NO. 4

7. Before I take other issues, it is necessary to determine issue No. 1 as it goes to the route of the case.

8. Learned authorised representative for the management contended that the matter had not been validly espoused by appreciable number of workmen or by the Union of the respondent establishment. His contention was that the minute book or resolution whereby the workmen have authorised the office bearers of the Union to raise has not been produced and in the absence of the material evidence, it cannot be said that the union had validly sponsored these

demands. There is sample merit in this contention. The workmen have not led any evidence. Mahinder Kumar, WW-1 nowhere stated that substantial number of workmen have passed any resolution authorising some workmen to raise present dispute. The workmen have not demonstrated in any manner that they had the community of interest in filing pursuing these demands. They have failed to produce any resolution or constitution of the Union authorising any workman to pursue the case.

9. Gur Parshad Satsangi, Director of the Company has categorically deposed that Rajinder Singh and Sudama Parshad had not been authorised by substantial number of workmen to submit the charter of demands.

10. In case of Deepak Industries, Limited and another *vs.* State of West Bengal and other, 1975-I-LLJ, page 293 (Calcutta High Court) it was observed that when the dispute is sponsored or espoused by a union, it seems to have been uniformly held by the judicial decisions that when the authority of the union is challenged by the employer, it must be proved that the Union has been duly authorised either by a resolution by its member or otherwise it had the authority to represent the workmen whose cause it is espousing.

11. As already discussed above no evidence has been adduced on this issue by the workmen. In the absence of any material evidence either resolution of members or authorisation by substantial number of them, it cannot be said that the matter has been properly and validly espoused by substantial number of workmen of the establishment.

12. It is the workmen who invoke the jurisdiction of the Industrial Tribunal by making application before the Government for reference. Thus onus was on them to show that the present dispute has assumed the character of industrial dispute but they failed to do so.

13. In the result I hold that there is no industrial dispute within the meaning of Section 2(k) of the Industrial Disputes Act, 1947 as these demands have not been espoused by the substantial number of the workmen of the establishment and thus this Tribunal has no jurisdiction to go into the merits of the case. In view of my findings on the aforesaid issue, it is not

necessary to go into other aspects of the case. The award is passed accordingly. No order as to cost.

The 21st August, 1987.

S. B. AHUJA,

Presiding Officer,  
Industrial Tribunal, Haryana,  
Faridabad.

Endorsement No. 1124, dated 31st August, 1987.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under Section 15 of the Industrial Disputes Act, 1947.

The 21st August, 1987.

S. B. AHUJA,

Presiding Officer,  
Industrial Tribunal, Haryana,  
Faridabad.

No. 9/4/87-6Lab./7622.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s. Kaushish Engineering Industries, 2-H-79 B.P. N.I.T., Faridabad.

BEFORE SHRI S. B. AHUJA, PRESIDING  
OFFICER, INDUSTRIAL TRIBUNAL,  
HARYANA, FARIDABAD.

Reference No. 36/1986

*between*

SHRI MEHAR PAUL SINGH C/O SHRI B. M. GUPTA, E-74, FIROZ GANDHI NAGAR, FARIDABAD AND THE MANAGEMENT OF M/s. KAUSHISH ENGINEERING INDUSTRIES 2-H-79 B.P. N.I.T. FARIDABAD

Present :

Shri B. M. Gupta, authorised representative  
for the workman.

Shri S. P. Rana, authorised representative  
for the management.

## AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 the Governor of Haryana referred the following dispute between Shri Mehar Paul Workman and the Management of M/s. Kaushish Engineering Industries, 2-H/79 B.P. N.I.T., Faridabad, to this Tribunal for adjudication :—

Whether the termination of services of Shri Mehar Paul is justified and in order ?  
If not, to what relief is he entitled ?

2. On notices being given, the parties appeared.

3. The petitioner case is that he had been working in the respondent factory for the last 3 years as Helper and was getting Rs. 430 per month. He alleged that the respondent terminated his services without any reason and did not allow him on duty with effect from 2nd August, 1986. He alleged that his service record was without any stigma or blemish. No charge-sheet or warning letter was given to him. He alleged that no retrenchment compensation was offered to him. He thus challenged the termination of his services being illegal. He prayed for reinstatement with full back wages and continuity of service.

4. The case was contested by the respondent. It was pleaded that the petitioner was engaged on probation for a specific period from 1st December, 1985 to 31st August, 1986 and during this period he remained absent for 11 days and had worked with them for 196 days. It was submitted that the petitioner's appointment was for a fixed period and on the expiry of the period, his appointment automatically ceased. It was pleaded that the petitioner had not completed one year of service with the respondent, and as such the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) were not attracted. In nut-shell, it was pleaded that the petitioner was not entitled to any relief.

5. On the pleadings of the parties, the following issues were settled :—

- (1) Whether the termination of services of Shri Mehar Paul Singh is justified and in order ? If not, to what relief is he entitled ?

6. The respondent Management examined Shri M. K. Sharma, MW-1 whereas the petitioner came in the witness box as WW-1. I have heard Shri S. P. Rana, learned authorised representative for the management and Shri B. M. Gupta, learned authorised representative for the workman and perused the record. My finding on the aforesaid issue is as under :—

## ISSUE NO. 1 :

7. Shri N. K. Sharma MW-1 testified that Mehar Paul was appointed as helper on probation. He joined their workshop on 1st December, 1985 and worked continuously up to 30th July, 1986. Exhibit M-1 is the application form submitted by the workman. Exhibit M-2 is the appointment letter. His period of probation was up to 31st August, 1986. He left the service on 2nd August, 1986. The workman was also covered under E.S.I. Exhibit M-3 and M-4 are the documents of E.S.I. Scheme. He also stated that Mehar Paul Singh petitioner worked with them for 195 days. He clarified that total number of working days including weekly rest and paid holidays came to 231 days. He also stated that Mehar Paul Singh is now doing his own business. He also added that appointment letter is also signed by the workman and that their establishment is a small scale industrial unit as per certificate Exhibit M-5.

8. On the contrary Mehar Paul Singh petitioner WW-1 stated that he was employed in the respondent company since 1983 and wages were disbursed to him on casual register and his attendance was also marked therein. He explained that Labour Inspector visited the factory in January, 1986 and got his name entered in the register. He produced Exhibit W-1 to W-4 copies of extract of attendance register pertaining for the period from January, March and July, 1984 and January, 1985. The management has not accepted the authenticity of these documents. He also produced one voucher Exhibit W-5 besides letter Exhibit W-6 to W-13.

9. On careful scrutiny of the evidence led by both the parties, I find that the version of Mehar Paul is worthy of credence, wherein he has claimed that he had joined the respondent factory in the year 1983. His version finds support from various circumstances on the record. He has produced on the record the original letters received by him at the company address which are Exhibit W-6 to W-13. The postal stamps on some of these letters are legible. Postal stamp

on Exhibit W-6 is, dated 5th October, 1985, on Exhibit W-8, dated 10th April, 1985, on Exhibit W-10, dated 25th August, 1984, on Exhibit W-11, dated 23rd November, 1984 and on Exhibit W-13, 13th July, 1984. This is not the case of single letter having been received by the worker on the company address but it is the case where the worker had received several letters on the company's address during the year 1984-85 which suggest that workman was working in the company during those years. It is worthwhile to mention that the respondent has not produced attendance register before the Court for perusal. Non-production of attendance register by the Management raises presumption against them. Learned authorised representative for the Management contended that the Mehar Paul was appointed with effect from 1st December, 1985 as per appointment letter Exhibit M-2 on probation for 3 months which period was extended. He submitted that appointment letter Exhibit M-2 was also signed by Mehar Paul Singh and urged that the appointment of Mehar Paul Singh be taken with effect from 1st December, 1985. His contention is without any merit. Letters Exhibit W-6 to W-13 produced on the record falsify the version of the Management and there are no reasons to discard that piece of evidence particularly when the Management withheld the production of attendance registers. It appears that in order to frustrate the provisions of the Industrial Disputes Act, the management issued fresh appointment letter Exhibit M-2 after getting the employment form Exhibit M-1 filled from the worker and showed his appointment on probation. It may be pointed out that N. K. Sharma, MW-1 in cross examination mentioned that the petitioner's services were not terminated but he has left their company before expiry of period of probation which had to expire on 31st August, 1986. His such stand is at variance with the written statement of the management where it is pleaded that petitioner ceased to be their employee automatically on the expiry of period of appointment.

10. In view of the above discussion, I have no hesitation to hold that the petitioner joined the respondent company in the year 1983. It is not disputed that his services came to end on 31st August, 1986 but his services have not been terminated or retrenched after complying with the provisions of section 25-F of the Act inasmuch as no notice pay in lieu of notice or retrenchment compensation was offered to him. Thus termination of services of the petitioner is not in consonance of the provisions of Section

25-F of the Act and is to be declared as illegal, void *ab initio* and in operative.

11. Learned authorised representative for the Management submitted that the probationer has no right to the post and termination of his service as per terms of appointment letter is valid as he was appointed on probation. He cited the cases of Oil and Natural Gas Commission vs. Dr. Iskendarali, 1980-S.C.C. (L&S.) 446, Union of India v. Arun Kumar Roy, 1986-S.C.C. (L&S.) page 199, Ajit Singh and others etc. and State of Punjab and another, 1983-I-L.L.J. page 410, Shankariah v/s K.S.R.T.C. 1986-I.L.L.J. page 195, Dhanjibhai Ramjibhai vs. State of Gujarat, 1985 S.C.C. (L&S.) page 379 and Gnanamony and State of Kerala, 1987-I-L.L.J. page 277. None of the rulings cited by him have any bearing to the facts of the present case because the petitioner in our case had been in employment since 1983. It is not the case where the petitioner was appointed for first time with effect from 1st December, 1985

12. In the result, I hold that the termination of services of the petitioner is neither justified and nor in order. He is thus ordered to be reinstated with full back wages and continuity of service. No order as to cost. The award is passed accordingly.

S. B. AHUJA,

The 21st August, 1987.

Presiding Officer,  
Industrial Tribunal.  
Haryana, Faridabad.

Endorsement No. 1125, dated the 31st August, 1987.

Forwarded (four copies) to the Commissioner and Secretary to Government Haryana, Labour and Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

S. B. AHUJA,

Presiding Officer,  
Industrial Tribunal.  
Haryana, Faridabad.